

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

BAOYANG CHEN,	:	Case No. 1:17-cv-460
Plaintiff;	:	
	:	Judge Michael R. Barrett
v.	:	
	:	
GSC OPPORTUNITIES, L.P., et al.	:	
Defendants.	:	
	:	

**DECLARATION OF JUSTIN J. JOYCE
IN SUPPORT OF PLAINTIFF BAOYANG CHEN'S
RESPONSE TO GOLD STAR CHILI, INC'S MOTION TO DISMISS**

Now comes Justin J. Joyce, who hereby states upon penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I have personal knowledge of the matters set forth in this declaration.
2. I am attorney for Plaintiff in this action. I am a member, in good standing, of the permanent bar of this Court, the Ohio Bar, and the Kentucky Bar. I am an senior associate at the law firm of Porter, Wright, Morris & Arthur, LLP.
3. Attached hereto as Exhibit 1 is a document Mr. Michael Rohrkemper brought with him to a deposition taking place on October 14, 2019. I took this deposition, personally received this document, and affirm that the document attached as Exhibit 1 is a true and correct copy of the document Mr. Rohrkemper provided to me.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 25th day of June, 2020.

/s/ Justin J. Joyce

EB-5 Investment Outline – Phase 1

EB-5 Immigrant Investor Opportunity - We have been in communication with an entity named "Midwest EB-5 Regional Center" (MERC) to discuss the potential for foreign investment in the Gold Star Chili, Inc. (GSC) franchise system. A Regional Center (MERC) is defined as "an economic entity, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment". Regional Centers are established to attract and manage EB-5 capital.

What is EB-5? - Created in 1990 EB-5 is a specialized class of U.S. immigration visa whereby applicants must fulfill capital investment and job creation requirements. As with all U.S. visas, all processes related to EB-5 are overseen by the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS). This is a program sponsored by the United States Government to create domestic jobs via foreign investment.

Transaction Outline – The transaction being discussed can be outlined as follows:

A joint venture (JV) entity (GSC Opportunities, LP) will be formed in which Gold Star Chili, Inc. (or a wholly owned subsidiary of GSC, Inc.) is a General Partner owning 1/3 of the entity and contributing \$1.038MM in cash and \$212K in other value (i.e. partial waiver of franchise fees & soft costs paid). Five Foreign Nationals will each invest \$500K (Total \$2.5MM) and will be limited partners (no voting rights) owning 2/3 of the LP. GSC, Inc. via its wholly owned subsidiary will be the General Partner of the Project Owner (GSC Opportunities, LP) with total control of the project (with exception of MERC having a consensus role for site selection and management of EB-5 requirements).

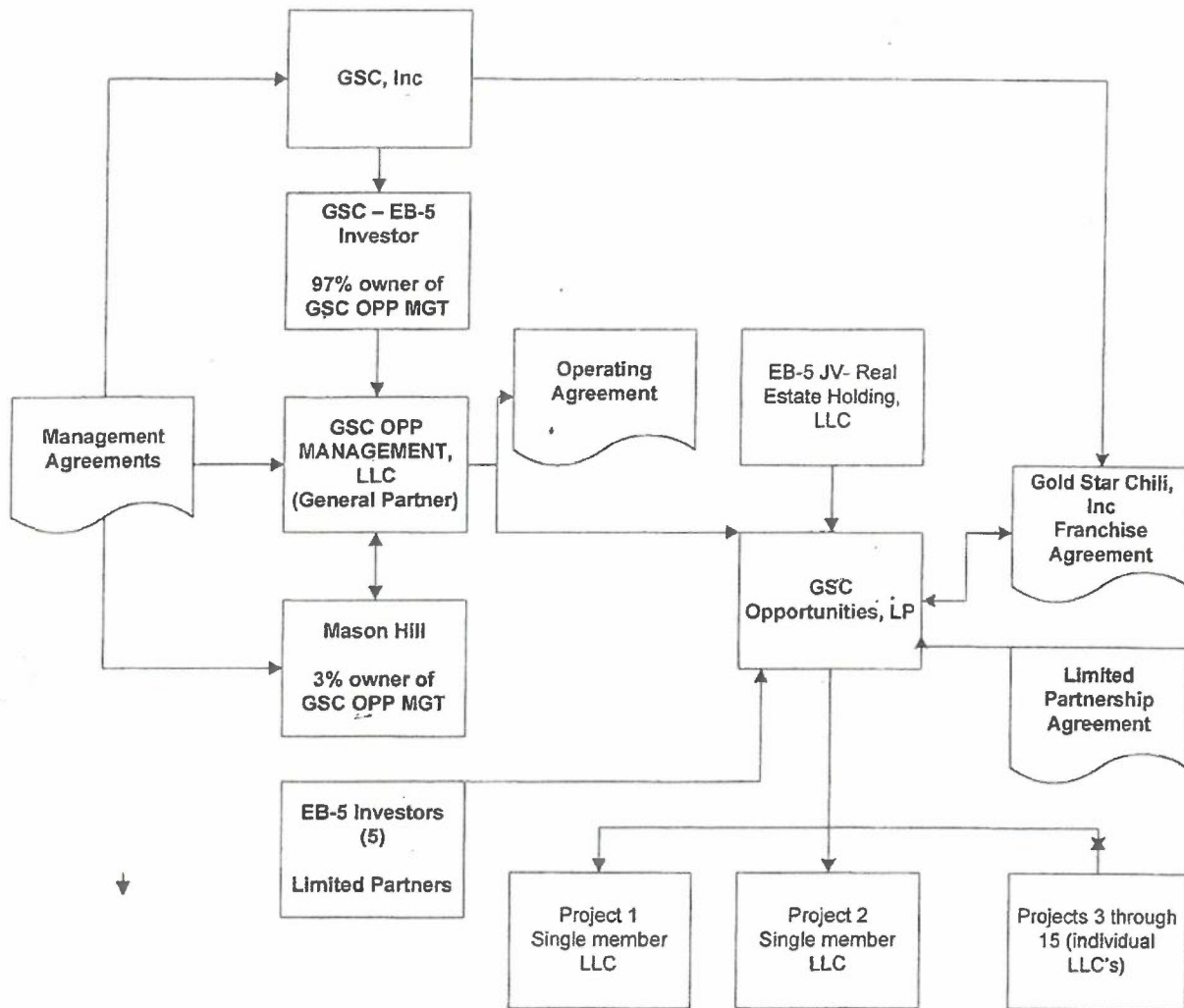
- All capital contributed to the JV will be Equity Capital (as opposed to Debt) and there will be no obligation for repayment, no interest requirement, or no conversion features.
- A project entity outline, defining the legal entities involved, can be found at Tab 1
- A sources and uses of funds can be found at Tab 2
- A Pro Forma cash flow projection can be found at Tab 3
- Six restaurants will be built with the funds, one restaurant with owned real estate. These restaurants will fall under the guidelines of franchise agreements and will be held in individual single member LP's owned by GSC Opportunities LP.
- There are significant commissions (\$500K) being paid to various entities, including Mason Hill (MERC's legal entity), for the capital raising aspects of this transaction.
- There can be a sale leaseback option (Real Estate) after five years but the resulting lease expense cannot exceed 7% of the gross sales of the related restaurant. We will have leases in place covering 10 plus years which will cap rent and taxes at 7% of store revenue.
- A separate franchise agreement will be executed between GSC, Inc. and the JV for each restaurant built.
- GSC (through a wholly owned subsidiary, GSC EB-5, Ltd. "The Manager") will be the General Partner of GSC Opportunities, LLP and its role as General Partner will be defined by an operating agreement. The Manager will provide oversight and services to the operating entities, for a fee paid by the JV, similar to the services and oversight provided to GSC

EB-5 Investment Outline – Phase 1

Company owned stores. The Manager (GSC EB-5, Ltd) will receive a fee of \$15K, per store, annually for the oversight services. All direct expenses of the project will be the responsibility of GSC Opportunities, LP. This fee will be reviewed after five years.

- Distributions of earnings and profits (E&P) will not be made consistent with pro rata ownership (certain distributions, in the first five years will be paid at a ratio of 80%/20% versus 2/3 - 1/3) but ownership will be "trued up" at a future date. The true up will be based on a calculation of "disproportionate" allocations of E&P. The amount of disproportionate allocations will be converted to additional ownership for Gold Star Chili, Inc. in the joint venture based on fair market value of the joint venture entity as of the date of the true up. Tax distributions, at a rate of 40% will be made based on the allocations of E&P. The cash flow impact of these distributions can be seen in the cash flow analysis (Tab 3).
- Mason Hill (MERC) will receive a fee of 3% of sales, for five years, to manage the EB-5 aspects of the organization.
- To satisfy the EB-5 program requirements the new stores would need to be in service within 2 years.
- A store P&L pro forma, assuming owned real estate can be found at Addendum 4.
- A store P&L pro forma, assuming leased real estate can be found at Addendum 5.
- The GSC contribution would be borrowed from Huntington Bank and would be repaid over a 5 year term (5 year term – 7 year amortization). A balloon payment (approx. \$330K) would be made at the end of year 5 after a sale / leaseback of real estate.
- This debt would replace our Development Credit Facility as we would no longer look at that avenue for growth.

**Gold Star Chili, Inc. and EB-5 Investor Joint Venture
Phase 1 – 5 EB-5 Investors**



Investments
GSC, Inc. \$1.25MM - 1/3 of GSC Opp
EB-5 Investors \$2.5MM - 2/3 of GSC Opp

GSC, Inc. is Managing Member
Of GSC EB-5 Manager - 97% owner